

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NELSON LORA-PENA

Plaintiff,

v.

FEDERAL BUREAU OF
INVESTIGATION, UNITED STATES
MARSHAL SERVICE, DEPUTY U.S.
MARSHAL ROBERT DENNEY,
DEPUTY U.S. MARSHAL JACK LEO,
DEPUTY U.S. MARSHAL WILLIAM
DAVID, SUP. DEP. U.S. MARSHAL
THOMAS DAVIS, FUGITIVE
APPREHENSION TASK FORCE,
TASK FORCE OFFICER FLETCHER,
TASK FORCE OFFICER DAILY, TASK
FORCE OFFICER BOWERS, and STATE
POLICE TROOPER HAHN

Defendants.

Civil Action No. 06-442-SLR

MOTION TO SUBSTITUTE PARTY

COMES NOW, Colm F. Connolly, United States Attorney, by and through Seth M. Beausang, Assistant United States Attorney, and respectfully moves the Court to substitute the United States of America as the sole Defendant in place of all the above-named Defendants, with respect to Plaintiff's state law claims. In support of the Motion, the Defendants state:

1. Plaintiff has raised numerous state law claims against the above-named Defendants, all of which arise out of alleged conduct by the above-named Defendants while they were all members of the United States Marshal Service Fugitive Task Force and acting within the scope of their employment as employees of the United States.

2. As shown in Exhibit A attached hereto, Colm F. Connolly, United States Attorney, has certified, pursuant to his authority under 28 U.S.C. § 2679(d)(1) (2006) and 28

C.F.R. § 15.4(b) (2006), that the above-named individual Defendants, namely, U.S. Marshals Jack Leo, William David, Robert Denney, and David Thomas;¹ Task Force Officers Fletcher, Daily, and Bowers; and State Police Trooper Hahn, were all members of the United States Marshal Service Fugitive Task Force acting within the scope of their employment as employees of the United States at the time of the conduct alleged in Plaintiff's Complaint.

3. 28 U.S.C. § 2679(d)(1) provides that upon certification that the "defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant."

4. Accordingly, the United States should be substituted as the sole Defendant with respect to Plaintiff's state law claims. *See* 28 U.S.C. § 2679(d)(1); *see also* *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 421 (1995). A proposed order is filed herewith.

Dated: January 11, 2007

Respectfully Submitted,

COLM F. CONNOLLY
United States Attorney

By: /s/ Seth M. Beausang
Seth M. Beausang (I.D. No. 4071)
Assistant United States Attorney
The Nemours Building
1007 Orange Street, Suit 700
Wilmington, DE 19801
(302) 573-6277

¹U.S. Marshal David Thomas is misnamed in the Complaint as "Thomas Davis."

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NELSON LORA-PENA	:	
	:	
Plaintiff,	:	
	:	Civil Action No. 06-442-SLR
v.	:	
	:	
FEDERAL BUREAU OF	:	
INVESTIGATION, UNITED STATES	:	
MARSHAL SERVICE, DEPUTY U.S.	:	
MARSHAL ROBERT DENNEY,	:	
DEPUTY U.S. MARSHAL JACK LEO,	:	
DEPUTY U.S. MARSHAL WILLIAM	:	
DAVID, SUP. DEP. U.S. MARSHAL	:	
THOMAS DAVIS, FUGITIVE	:	
APPREHENSION TASK FORCE,	:	
TASK FORCE OFFICER FLETCHER,	:	
TASK FORCE OFFICER DAILY, TASK	:	
FORCE OFFICER BOWERS, and STATE	:	
POLICE TROOPER HAHN	:	
	:	
Defendants.	:	

ORDER

AND NOW, this ____ day of _____, 2007, upon consideration of the Motion to Substitute Party filed by the United States, and upon certification of Colm F. Connolly, United States Attorney, pursuant to his authority under 28 U.S.C. § 2679(d)(1) (2006) and 28 C.F.R. § 15.4(b) (2006), that the above-named individual defendants, namely, U.S. Marshals Jack Leo, William David, Robert Denney, and David Thomas;¹ Task Force Officers Fletcher, Daily, and Bowers; and State Police Trooper Hahn, were all members of the United States Marshal Service Fugitive Task Force acting within the scope of their employment as employees of the United States at the time of the conduct alleged in Plaintiff's Complaint, it is ORDERED that the

¹U.S. Marshal David Thomas is misnamed in the Complaint as "Thomas Davis."

Motion is GRANTED and the United States shall be substituted as the sole Defendant in place of the Individual Defendants with respect to Plaintiff's state law tort claims.

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, Seth M. Beausang, hereby attest under penalty of perjury that on this 11th day of January, 2007, I caused two copies of the Motion to Substitute Party and Proposed Order to be served on the Plaintiff and other counsel by First Class Mail at the following addresses:

Nelson Lora-Pena
I.D. No. 03883-070
U.S.P. Canaan
P.O. Box 300
Waymart, PA 18742

Stephani J. Ballard
Delaware Department of Justice
820 North French Street
Wilmington, DE 19801

/s/ Seth M. Beausang
Seth M. Beausang (De. I.D. No. 4071)

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NELSON LORA-PENA	:	
	:	
Plaintiff,	:	
	:	Civil Action No. 06-442-SLR
v.	:	
	:	
FEDERAL BUREAU OF	:	
INVESTIGATION, UNITED STATES	:	
MARSHAL SERVICE, DEPUTY U.S.	:	
MARSHAL ROBERT DENNEY,	:	
DEPUTY U.S. MARSHAL JACK LEO,	:	
DEPUTY U.S. MARSHAL WILLIAM	:	
DAVID, SUP. DEP. U.S. MARSHAL	:	
THOMAS DAVIS, FUGITIVE	:	
APPREHENSION TASK FORCE,	:	
TASK FORCE OFFICER FLETCHER,	:	
TASK FORCE OFFICER DAILY, TASK	:	
FORCE OFFICER BOWERS, and STATE	:	
POLICE TROOPER HAHN	:	
	:	
Defendants.	:	

**NOTICE OF CERTIFICATION PURSUANT TO
28 U.S.C. § 2679(d)(1) (2006) AND 28 C.F.R. § 15.4(b) (2006)**

TAKE NOTICE that, Colm F. Connolly, United States Attorney, hereby certifies, pursuant to his authority under 28 U.S.C. § 2679(d)(1) (2006) and 28 C.F.R. § 15.4(b) (2006), that the above-named individual defendants, namely, U.S. Marshals Jack Leo, William David, Robert Denney, and David Thomas;¹ Task Force Officers Fletcher, Daily, and Bowers; and State Police Trooper Hahn, were all members of the United States Marshal Service Fugitive Task Force acting within the scope of their employment as employees of the United States at the time of the conduct alleged in Plaintiff's Complaint. Pursuant to 28 U.S.C. § 2679(d)(1), the United

¹U.S. Marshal David Thomas is misnamed in the Complaint as "Thomas Davis."

States shall be substituted as the sole Defendant in place of the Individual Defendants with respect to Plaintiff's state law tort claims. A proposed order is filed herewith.

Dated: January 11, 2007.

Respectfully submitted,

COLM F. CONNOLLY
United States Attorney

By: /s/ Seth M. Beausang
Seth M. Beausang (I.D. No. 4071)
Assistant United States Attorney
The Nemours Building
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